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CLERK, U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

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BY:

DEPUTY

Attorneys for the United States of America

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA

Petitioner,

v.

TONI L. CHRISTIANI, individually and as  
general partner of Sullivan & Christiani, LLP

Respondent.

'08 CV 0687 BTM POR

Civil No.

**PETITION TO ENFORCE  
INTERNAL REVENUE SERVICE  
SUMMONSES**

The United States of America, by and through its undersigned counsel, hereby petitions this Court for an order to enforce a certain Internal Revenue Service ("IRS") Summonses served on respondent Toni L. Christiani, individually and as general partner of Sullivan & Christiani, LLP:

1. Jurisdiction over this matter is conferred upon this Court pursuant to 26 U.S.C. §§ 7402(b) and 7604(a) and 28 U.S.C. §§ 1340 and 1345.

2. Venue over this matter is proper in the Southern District of California because the Respondent resides in or may be found within the boundaries of this judicial district.

1           3.     Stephen Silverman is a Revenue Officer employed by the IRS in its Small  
2 Business/Self-Employed Division. In that capacity, he is authorized to issue an IRS summons  
3 pursuant to the authority contained in Internal Revenue Code section 7602 (26 U.S.C.) and  
4 Treasury Regulation section 301.7602-1 (26 C.F.R.). See Declaration of Revenue Officer S.  
5 Silverman ("Silverman Decl.") ¶¶ 1-2.

6           4.     In his capacity as a revenue officer, Revenue Officer Silverman is assigned to collect  
7 federal employment tax liabilities for Ms. Christiani's law firm, Sullivan & Christiani, LLP, for three  
8 quarters of tax year 2005, to collect federal income tax liabilities for Ms. Christiani for the tax year  
9 2001, and to investigate Ms. Christiani's failure to file federal income tax returns for the years 2003-  
10 2006. Silverman Decl. ¶ 3.

11           5. Pursuant to the above-described employment tax collection, on August 16, 2007, Revenue  
12 Officer Silverman issued an IRS summons (IRS Form 2039) directing Respondent Toni Christiani  
13 to appear on August 29, 2007, to give testimony and to produce for examination certain books,  
14 papers, records or other data as described in said summons. Silverman Decl. ¶ 4, Ex. A.

15           6. On August 16, 2007, Revenue Officer Silverman served an attested copy of the summons  
16 on Respondent Toni Christiani. Silverman Decl. ¶ 5, Ex. A.

17           7. Pursuant to the above-described personal income tax collection, on September 11, 2007,  
18 Revenue Officer Silverman issued an IRS summons (IRS Form 6637) directing Respondent Toni  
19 Christiani to appear on September 24, 2007, to give testimony and to produce for examination certain  
20 books, papers, records or other data as described in said summons. Silverman Decl. ¶ 7, Ex. B.

21           8. On September 11, 2007, Revenue Officer Silverman personally served an attested copy  
22 of the summons on Respondent Toni Christiani. Silverman Decl. ¶ 8, Ex. B.

23           9. Pursuant to the above-described investigation regarding Ms. Christiani's failure to file  
24 federal tax returns, on September 11, 2007, Revenue Officer Silverman issued an IRS summons  
25 (IRS Form 6638) directing Respondent Toni Christiani to appear on September 24, 2007, to give  
26 testimony and to produce for examination certain books, papers, records or other data as  
27 described in said summons. Silverman Decl. ¶ 9, Ex. C.

1           10. On September 11, 2007, Revenue Officer Silverman personally served an attested copy  
2 of the summons on Respondent Toni Christiani. Silverman Decl. ¶ 10, Ex. C.

3           11. On October 30, 2007, a letter was sent to Toni Christiani giving her a second  
4 opportunity to comply with the summonses by appearing on November 14, 2007. Silverman  
5 Decl. ¶ 12.

6           12. Respondent Toni Christiani failed to appear on November 14, 2007 and failed to  
7 produce the books, records, papers, and other data sought by and as described in the summonses.  
8 Silverman Decl. ¶ 13.

9           13. Due to the Southern California wildfires and the suspension on IRS enforcement  
10 activities in the impacted areas, the taxpayer was given another occasion to comply with the  
11 summonses. On December 10, 2007, a letter was sent to Toni Christiani giving her a second  
12 opportunity to comply with the summons by appearing on January 8, 2008. Silverman Decl. ¶ 14.

13           14. Respondent Toni Christiani failed to appear on January 8, 2008 and failed to produce  
14 the books, records, papers, and other data sought by and as described in the summonses. Silverman  
15 Decl. ¶ 15.

16           15. To date, Respondent Toni Christiani has failed to comply with the summonses.  
17 Silverman Decl. ¶ 16.

18           16. As evidenced by the declaration of Revenue Officer Silverman, the testimony and the  
19 books, records or other data sought by the summonses may be relevant to the collection of  
20 employment tax liabilities for Sullivan & Christiani, LLP, the collection of Ms. Christiani's personal  
21 2001 federal tax liabilities, and the investigation of Ms. Christiani's failure to file a return for the tax  
22 years 2003-2006. Silverman Decl. ¶¶ 17-19.

23           17. The testimony and documents described in the summonses are not already in the  
24 possession of the IRS. Silverman Decl. ¶ 20.

25           18. No Justice Department referral is in effect within the meaning of 26 U.S.C. § 7602(d)  
26 with respect to Respondent Toni Christiani for the tax period for which the testimony and documents  
27 are sought. Silverman Decl. ¶ 21.

1           19. All administrative steps required by the Internal Revenue Code for the issuance of an  
2 IRS summonses have been taken. Silverman Decl. ¶ 22.

3           20. In order to obtain enforcement of a summons, the IRS must establish that the  
4 summons: (1) is issued for a legitimate purpose; (2) seeks information relevant to that purpose;  
5 (3) seeks information that is not already within the IRS's possession; and (4) satisfies all  
6 administrative steps required by the United States Code. United States v. Powell, 379 U.S. 48,  
7 57-58, (1964). The government's burden under Powell "is 'a slight one' and typically is satisfied  
8 by the introduction of a sworn declaration of the revenue agent who issued the summons that the  
9 Powell requirements have been met." Fortney v. United States, 59 F.3d 117, 120 (9th  
10 Cir.1995)(citing United States v. Dynavac, Inc., 6 F.3d 1407, 1414 (9th Cir.1993); United States  
11 v. Gilleran, 992 F.2d 232, 233 (9th Cir.1993)).

12           21. In support of this petition and incorporated herein by reference, the United States  
13 submits the Declaration of Revenue Officer S. Silverman and the summonses and service of  
14 summonses attached to it as Exhibit A-C. The United States has met the Powell requirements  
15 through these documents.

16           WHEREFORE, petitioner the United States of America respectfully prays as follows:

17           A. That this Court enter an order directing Respondent Toni Christiani to show cause in  
18 writing, if any, why she should not comply with and obey the aforementioned IRS summons relating  
19 to the employment tax liabilities of Sullivan & Christiani, LLP and every requirement thereof as  
20 enumerated in the Declaration of Revenue Officer S. Silverman;

21           B. That this Court enter an order directing Respondent Toni Christiani to fully obey the  
22 aforementioned summons and each requirement thereof as enumerated in the Declaration of Revenue  
23 Officer S. Silverman, by ordering the attendance, testimony, and production required and called for  
24 by the terms of the summons, before Revenue Officer Silverman, or any other proper officer or  
25 employee of the IRS, at such time and place as may be set by Revenue Officer Silverman or any  
26 other proper officer or employee of the IRS;

1 C. That this Court enter an order directing Respondent Toni Christiani to show cause  
2 in writing, if any, why she should not comply with and obey the aforementioned IRS summons  
3 relating to Ms. Christiani's 2001 income tax liabilities and every requirement thereof as  
4 enumerated in the Declaration of Revenue Officer S. Silverman;

5 D. That this Court enter an order directing Respondent Toni Christiani to fully obey the  
6 aforementioned summons and each requirement thereof as enumerated in the Declaration of Revenue  
7 Officer S. Silverman, by ordering the attendance, testimony, and production required and called for  
8 by the terms of the summons, before Revenue Officer Silverman, or any other proper officer or  
9 employee of the IRS, at such time and place as may be set by Revenue Officer Silverman or any  
10 other proper officer or employee of the IRS;

11 E. That this Court enter an order directing Respondent Toni Christiani to show cause  
12 in writing, if any, why she should not comply with and obey the aforementioned IRS summons  
13 relating to her failure to file federal income tax returns for the tax years 2003-2006 and every  
14 requirement thereof as enumerated in the Declaration of Revenue Officer S. Silverman;

15 F. That this Court enter an order directing Respondent Toni Christiani to fully obey the  
16 aforementioned summons and each requirement thereof as enumerated in the Declaration of Revenue  
17 Officer S. Silverman, by ordering the attendance, testimony, and production required and called for  
18 by the terms of the summons, before Revenue Officer Silverman, or any other proper officer or  
19 employee of the IRS, at such time and place as may be set by Revenue Officer Silverman or any  
20 other proper officer or employee of the IRS;

21 G. That the United States recover its costs incurred in maintaining this action; and

22 H. That the Court grant such other and further relief as it deems is just and proper.

23  
24 ///

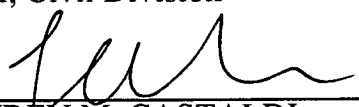
25 ///

26  
27  
28 Petition

1 Respectfully submitted this 9<sup>th</sup> day of April, 2008.

2  
3 KAREN P. HEWITT  
United States Attorney

4 TOM STAHL  
5 Assistant United States Attorney  
Chief, Civil Division

6   
7 LAUREN M. CASTALDI  
8 Trial Attorney, Tax Division  
U.S. Department of Justice

9 Attorneys for the United States of America

## CIVIL COVER SHEET

JS 44 (Rev. 11/04)

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

## I. (a) PLAINTIFFS

Unites States of America

## (b) County of Residence of First Listed Plaintiff

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number) 202-514-9668  
 Lauren M. Castaldi, Trial Attorney, Tax Division  
 U.S. Dept. Of Justice, P.O. Box 683,  
 Washington, D.C. 20044-0683

## DEFENDANTS

Toni L. Christiani

08 APR 15 PM 2:57

County of Residence of First Listed Defendant: San Diego

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE  
 LAND INVOLVED.

Attorneys (If Known)

DEPUTY  
 08 CV 0687 BTM POR

## II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☒ 1 U.S. Government Plaintiff  
☐ 2 U.S. Government Defendant  
☐ 3 Federal Question (U.S. Government Not a Party)  
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | PTF  | DEF  | PTF                        | DEF                        |
|--|--|----------------------------|----------------------------|
| <input type="checkbox"/> 1 Citizen of This State                   | <input type="checkbox"/> 1 Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| <input type="checkbox"/> 2 Citizen of Another State                | <input type="checkbox"/> 2 Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| <input type="checkbox"/> 3 Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

## IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability <b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RST (405(g)) <b>FEDERAL TAX SUITS</b> <input checked="" type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes

## V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding  
☐ 2 Removed from State Court  
☐ 3 Remanded from Appellate Court  
☐ 4 Reinstated or Recopened  
☐ 5 Transferred from another district (specify)  
☐ 6 Multidistrict Litigation  
☐ 7 Appeal to District Judge from Magistrate Judgment

## VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
 26 U.S.C. §§ 7402(b) and 7604(a)

Brief description of cause:

Petition to enforce Internal Revenue Summons

## VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

## DEMAND \$

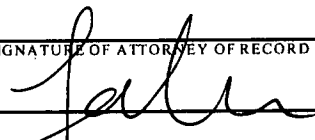
CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No

DATE

4/9/2008

SIGNATURE OF ATTORNEY OF RECORD



FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE